

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

BELINDA BISSONNETTE,

Plaintiff,

Case No: 18-000589-CB

Hon. Brian R. Sullivan

-vs-

IPS REALTY GROUP, LLC,

Defendant.

and

BELINDA BISSONNETTE,

Plaintiff/Counter-Defendant,

-vs-

RONDO INVESTMENTS, INC.,

Defendant/Counter-Plaintiff.

**ORDER DENYING DEFENDANT, RONDO
INVESTMENTS, MOTION FOR SUMMARY DISPOSITION**

At a session of said Court, held in the City
County Building, City of Detroit, County of
Wayne, State of Michigan, on
9/10/2019

PRESENT: HONORABLE BRIAN R. SULLIVAN

Defendant Rondo Investments filed a motion for summary disposition on the ground there is no genuine issue as to any material fact that it did not breach its contract with plaintiff. Rondo contends there is no dispute the damage to the property claimed by

plaintiff occurred after plaintiff terminated defendant Rondo's management contract. The court agrees and grants defendant's motion for summary disposition.

FACTS

Plaintiff and Rondo entered into a contract for Rondo to manage and maintain real property owned by plaintiff, including 11070 Nottingham. Rondo did so by making repairs, collecting rent and, after the property became vacant, Rondo winterized it on November 18, 2016. Photographs taken by Rondo documented the defendant's winterization of the Nottingham property and were attached as exhibits to defendant's motion.

The Nottingham property was vandalized the night of November 18th or morning of the 19th, 2016. The hot water heater and furnace were also stolen from the vacant property at that time.

Plaintiff visited the Nottingham property about December 16, 2016 after the winterization by defendant. Plaintiff admits when she was at the property it had been winterized and had no water damage. Plaintiff terminated her contract with Rondo between November 22 and December 11, 2016. On December 6 or 7, 2016 plaintiff signed a management with co-defendant IPS to replace Rondo.

In January, 2017 Carl Sammons of IPS performed a routine property inspection of

Nottingham and discovered water damage in the house. The faucet to the kitchen sink had been removed and water was pouring from the sink. There was other damage to the Nottingham property.

Bissonnette filed suit against both IPS and Rondo. Plaintiff claimed Rondo is responsible for the water damage discovered in January of 2017, failure to pay fees to plaintiff (conversion) and negligence.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(8), (C)(9) and (C)(10) on the basis it could not be liable because it performed its contractual obligations, there was no water damage to the house when it was terminated and the contract precludes the negligence claim.

STANDARD OF REVIEW MCR 2.116(C)(8)

A motion pursuant to MCR 2.116(C)(8) tests the legal sufficiency of a claim. A motion under (C)(8) should be granted if the opposing party has failed to state a claim upon which relief can be granted. *Gorman v American Honda Motor Company, Inc.*, 302 Mich App 113 (2013); *Maiden v Rozwood*, 461 Mich 109 (1999). The motion is based on the pleadings alone. See *Feyz v Mercy Memorial Hospital*, 475 Mich 663 (2006). All well plead allegations are accepted as true in a light most favorable to the non-moving party. *Dally v Dykema, Gossett*, 287 Mich App 296 (2010).

Conclusory statements unsupported by factual allegations are insufficient to state a cause of action. See *Churella v Pioneer State Mutual Insurance Company*, 258 Mich App 260 (2003). A motion under 2.16(C)(8) should be granted when the claim is so clearly unenforceable as a matter of law that no factual development could justify recovery. See *Lakin v Rondaur*, 318 Mich App 127 (2016).

MCR 2.116(C)(10)

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. The trial court evaluates this motion for summary disposition by considering all the documentary evidence, including affidavits, pleadings, depositions, admissions and other evidence submitted by the parties. MCR 2.116(G)(5). The court must consider the evidence and draw all reasonable inferences in a light most favorable to the non-moving party. *Maiden v Rozwood*, 461 Mich 109, 120 (1999); *Rice v Auto Insurance Association*, 252 Mich App 25 (2002); *Ward v Franks Nursery and Crafts, Inc.*, 186 Mich App 120 (1990); *Dextrom v Wexford Co.*, 287 Mich App 406 (2010). Summary disposition is proper when the evidence fails to establish a genuine issue of material fact. In such a circumstance the moving party is entitled to a judgment as a matter of law. See *West v General Motors Corp.*, 469 Mich 177 (2003). A genuine issue of material fact exists when the record, giving the benefit of a reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds may disagree. *West, Id.* If the proffered evidence fails

to establish a genuine issue regarding any material fact the moving party is entitled to judgment as a matter of law. See MCR 2.116(C)(10), (G)(4); *Quinto v Cross and Peters Company*, 451 Mich 358 (1996).

If the opposing party fails to submit such evidence to establish a question of fact it cannot rely on the allegations or denial contained in the pleadings. Summary disposition in such cases is proper. See *SSC Associates Limited Partnership v General Retirement System of the City of Detroit*, 192 Mich App 360 (1991).

A motion under sub-rule (C)(10) must specifically identify the issues to which the moving party believes there is no genuine issue as to any material fact. The adverse party may not rest on mere allegations or denials in the pleadings but must, by affidavit or otherwise, set forth specific facts showing there is a genuine issue of fact for trial. See MCR 2.116(G)(4).

A party's pledge to establish an issue of fact at trial cannot survive summary disposition under (C)(10). *Maiden*, 461 Mich at 121. The court rule requires the adverse party to set forth specific facts at the motion showing a genuine issue for trial. The reviewing court must evaluate the motion by considering the substantively admissible evidence proffered in support and opposition of the motion. *Maiden*, 461 Mich at 121; *McCart v J Walter Thompson USA, Inc.*, 437 Mich 109, 115, note 4 (1991).

DISCUSSION

Plaintiff and defendant entered into a management contract on December 17, 2015, which covered the period beginning February 1, 2016 through February 28, 2017 for 11070 Nottingham. On May 12, 2016 the Detroit Housing Commission performed an inspection on the Nottingham property and issued a pass rating. Defendant performed a variety of maintenance work to the property in May, July and September, 2016, and has receipts for that work.

Defendant winterized the house on November 18 and 19, 2016. Defendant shut the water off in the basement and the water meter was disconnected. Water was drained from the toilet, the hot water tank, from the pipes, and faucets were left open. Defendant poured antifreeze in the toilets and drains; tape was placed over the toilets and the gas was turned off at the hot water heater. Rondo documented these and other winterizing tasks. Rondo filed an affidavit of that winterization and attached it to the motion together with photos documenting the work done.

When defendant returned to the property on November 19, 2016 it discovered the side door was damaged, paneling was damaged and forcible entry had been made into the house. The water heater and furnace was reported stolen from the house. Defendant made a police report with the Detroit Police Department on November 21, 2016.

There is no evidence there was any water damage done to the property in November, 2016 nor in December, 2016. when defendant was terminated and replaced by IPS¹. Plaintiff personally inspected the property in December, 2016 and attested there was no damage to it. Plaintiff signed a contract with IPS Realty about December 7, 2016 and IPS assumed the responsibility to inspect and maintain the Nottingham property.

Plaintiff admitted that the water damage occurred at Nottingham in January, 2017. This was after defendant Rondo's contract was terminated. (See deposition of Belinda Bissonnette, page 145). The defendant's photographic and testimonial evidence also support this conclusion. A photograph that the water meter was disconnected and no water flowing from it is in evidence. Moreover, photographs of the kitchen show there is no water flowing from the kitchen or any other place in the house. There is evidence that the house was winterized as defendant contends. Plaintiff does not deny that. Plaintiff's deposition testimony affirms she visited the property in December, 2016, after she terminated Rondo, and several weeks after the photographs were taken. Plaintiff testified that there was no visible damage to the property. Plaintiff has presented no contrary evidence in opposition to that presented by Rondo in support of the motion.

Plaintiff sued Rondo for breach of contract and negligence for the damage to the property. Plaintiff specifically contends Rondo should have shut off the water at the street not in the home, and thus the Nottingham house was improperly winterized.

¹A letter from the plaintiff to Rondo Investment dated December 20, 2016 indicated their contract was terminated by plaintiff as to the Nottingham property.

Defendant's asserted that the winterization was properly done, it did not breach the contract and the damage to the property was done after defendant was discharged.

Plaintiff has not presented any evidence in opposition to defendant's evidence that its winterization was done appropriately under the contract. Plaintiff also hired IPS to replace Rondo after the winterization and before the water damage was done. IPS' duty began after Rondo was terminated and Rondo's duty ended on its termination.

There is no genuine issue as to any material fact that Rondo did properly maintain and winterize the Nottingham property under the contract, and there is no question the damage to Nottingham was done about a month after plaintiff terminated Rondo. There is evidence Rondo disconnected the water inside the house (not at the street) and the water had to be turned on from the inside of the house by another. That is not a breach of duty as there was no obligation to foresee criminal behavior and no contractual requirement for plaintiff the city to disconnect the water at the street. Rondo had no duty to return to the premises after its discharge to re-inspect that aspect of the premises. That duty belonged to IPS or plaintiff. Plaintiff was present at the premises in December, 2016 after Rondo's discharge and admitted there was no damage to the premises when she was present and did not inquire or seek disconnection at the street.

Plaintiff has presented no contrary evidence to that presented by defendant, only

evidence of damage, damage done after Rondo's termination. Rondo cannot be responsible for breach of contract under the evidence presented in this case. Rondo had no duty to plaintiff after it was discharged. Summary disposition is granted on breach of contract and negligence.

Finally, defendant can't be liable in negligence as it breached no duty (it had been terminated) and there is a contract in place which covers the same subject matter as the alleged tort. *Hart v Ludwig*, 397 Mich 559 (1956); *Fulz v Union Commerce Associates*, 470 Mich 460 (2004).

Plaintiff also sued Rondo for conversion. The interpretation of a contract is a question of law for the court. Conversion is a distinct act of dominion wrongfully exerted over the property of another inconsistent with their rightful owner's rights. See *Roma Wines and Equipment, Inc. v Columbia Distribution Services, Inc.*, 303 Mich App 441 (2014). To support an action for a conversion of money the defendant must have an obligation to return the specific money entrusted to his care. *Head v Phillips Camper Sales and Rental, Inc.*, 234 Mich App 94 (1999). The money must have been obtained without the owner's consent. *Citizens Insurance Co. v Delcamp Truck Center, Inc.*, 178 Mich App 570, 578 (1989).

Plaintiff claims Rondo converted funds from plaintiff business because it did not use rent funds it collected under its contract with plaintiff to maintain the plaintiff's properties.

The contract specifically allows Rondo to collect and receive rental payments, withhold its commissions and then remit the balance to the plaintiff. Since Rondo had contractual authority to take the money and pay itself that payment cannot be the basis of conversion. The plaintiff must demonstrate by evidence the money was wrongfully withheld by defendant. Plaintiff has not done so. Moreover, Rondo produced receipts for repairs it made to the Nottingham premises. There is no evidence Rondo kept more than it was authorized to keep. There is no evidence that Rondo, who reported the theft, stole the hot water heater or the furnace. While Rondo had a management contract with the plaintiff it doesn't follow there that they are responsible for that loss, by theft, absent some evidence to support such a claim. There is no claim or evidence to support it presented in this case by plaintiff.

Plaintiff's claim in this court fails as a matter of law. Summary disposition for the defendant is granted; and

IT IS SO ORDERED.

/s/ Brian R. Sullivan 9/10/2019
BRIAN R. SULLIVAN
Circuit Court Judge

ISSUED: